

ST 99-28

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**"POTTER'S FIELD BENEVOLENT SOCIETY",
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket No: 97-ST-0000

Sales Tax Exemption

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Barbara Smith-Jones, President of "Potter's Field Benevolent Society, on behalf of the applicant; Attorney John Alshuler on behalf of the Illinois Department of Revenue.

SYNOPSIS: On September 19, 1996, "Potter's Field Benevolent Society" (hereinafter the "applicant") sent the Illinois Department of Revenue (hereinafter the "Department") a letter requesting a sales tax exemption identification number. On October 25, 1996, the Department issued a letter which tentatively denied applicant's request. On December 17, 1996, applicant protested the Department's tentative denial and requested a hearing.

The sole issue to be determined at the hearing was whether applicant qualifies for an exemption identification number as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable *** purposes[.]" 35 ILCS 105/3- 5(4); 35 ILCS 120/2-5(11). Following a careful review of all the evidence presented at the hearing, I recommend that the Department's tentative denial of exemption be reversed.

FINDINGS OF FACT

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Tentative Denial of Exemption. Dept. Gr. Ex. No. 1, Doc. B.
2. Applicant was reinstated as a not-for-profit corporation on August 16, 1996. Dept. Gr. Ex. No. 1, Doc. A.
3. The applicant's amended articles of incorporation provide that the applicant was organized "exclusively for charitable, religious, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code." App. Ex. No. 1.
4. More specifically, the applicant's amended articles of incorporation provide that the applicant was organized to "acquire, construct, provide, and operate zero/low income subsidized rental housing and related facilities for the indigent, seniors, the disabled, handicapped, and moderate income families *** without regard to race color, religion, sex, age, handicap, marital or familial status, national origin, or financial instability." App. Ex. No. 1.
5. Consistent with its articles of incorporation, the applicant owns and operates a senior citizen complex in "Fandango" Township in "Anywhere" County. Tr. p. 13.
6. "Fandango" Township is one of the poorest townships in Illinois and has a median household income of \$11,000. App. Ex. No. 9; Tr. p. 21.
7. The applicant's senior citizen complex was built in cooperation with the United States Department of Agriculture Farmers Home Administration (hereinafter "USDAFHA"). Tr. pp. 20-22.

8. The applicant's senior citizen complex houses 24 low-income senior citizens who pay a percentage of their income as rent. Because there is no minimum rent, residents do not need any income to live in the complex. Tr. pp. 22-25.

9. The applicant's 1996-1997 combined income of \$150,085 was derived primarily from three sources:

Federal Subsidies	53%
Rental Income	23%
Private Donations	13%

App. Ex. No. 8

10. The applicant's 1996-1997 combined expenses of \$132,942 were apportioned as follows:

Depreciation	36%
Interest	19%
Repairs and Maintenance	11%
Management fee	11%
Utilities	9%
Supplies	4%
Insurance	4%

App. Ex. No. 8.

11. Although the USDAFHA helps finance the applicant, the USDAFHA does not run the senior citizen's complex. Tr. p. 33.

12. The applicant organization is composed of volunteers who donate their time to run the project and take care of the complex residents' day-to-day needs. Tr. pp. 30-34.

13. The applicant has no employees, but does pay a nominal management fee to an individual who helps take care of the building (hereinafter the "site manager"). Tr. pp. 30-31. The total management fee for all of 1996 and all of 1997 was under \$15,000. App. Ex. No. 8.

14. The Internal Revenue Service granted the applicant an exemption from federal income taxes on February 6, 1997 pursuant to section 501(c)(3) of the Internal Revenue Code. Dept. Gr. Ex. No. 1, Doc. A.
15. The applicant has no capital stock or shareholders. App. Ex. No. 1.
16. The applicant does not engage in lobbying or other political activities. App. Ex. No. 1.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department tentatively denying the applicant a sales tax exemption number should be reversed. In support thereof, I make the following conclusions:

The applicant seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable *** purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11).¹ The taxpayer bears the burden of proving, by “clear and convincing” evidence, that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

The applicant’s amended articles of incorporation provide that the applicant was organized for charitable purposes. However, merely because an organization’s governing

¹ The word “exclusively” when used in exemption statutes means “primary.” Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1987).

legal documents set forth that it is organized for charitable purposes does not relieve the organization of the burden of proving it actually operates as a charitable institution. See Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

In Methodist Old People's Home, our supreme court set forth a number of factors which may be considered in assessing whether an organization actually operates for charitable purposes. These factors include whether the applicant: (1) has any capital stock or shareholders; (2) earns no profits or dividends and instead derives its funds mainly from public and private charity; (3) dispenses charity to all who need and apply for it; (4) provides gain or profit in a private sense to any person connected with it; and, (5) places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. *Id.* at 157. These factors are guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the burdens of government. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Applying the guidelines from Methodist Old People's Home, I find that the applicant has presented clear and convincing evidence establishing that it operates exclusively for charitable purposes.

It is readily apparent that the applicant satisfies the first four Methodist Old People's Home guidelines. The applicant has no stock or shareholders. App. Ex. No. 1. The applicant “derives its funds mainly from public and private charity” because over 66% of applicant’s income comes from Federal subsidies or private donations. App. Ex. No. 8. The applicant dispenses its services to all who need and apply for it without regard to race, religion, sex, family status, national origin, or financial ability. App. Ex.

No. 1; Tr. pp. 20-22. Additionally, the applicant does not provide gain or profit in a private sense to anyone connected with it.²

At the hearing, it became apparent that the Department's primary basis for its tentative denial was the fifth guideline from Methodist Old People's Home, namely whether the applicant placed obstacles in the way of those who need and would avail themselves of the applicant's services. As counsel for the Department noted when explaining the Department's tentative denial of exemption, "the Department's basic problem with the organization was that it wasn't absolutely established that anyone was qualified to live in this project irrespective of whether he had no income or a minimum income." Tr. p. 25.

At the hearing, the applicant assuaged this concern by presenting credible testimony that even a person with no income at all would qualify to live in the project. Tr. pp. 25-26. This testimony was consistent with the applicant's amended articles of incorporation which provide that that the applicant will provide housing to the "indigent" and without regard to "financial instability." App. Ex. No. 1. This evidence was also consistent with the applicant's financial records, which show that the average tenant paid less than \$110 per month in rent.³

In conclusion, the evidence presented at the hearing established that the applicant, in cooperation with the USDAFHA, provides housing to needy senior citizens at reduced rates. Neither the applicant, nor any of the people associated with the applicant, realizes

² Although a management fee is paid to a site manager, that fee is so nominal that the site manager could not fairly be deemed a primary beneficiary of the applicant's activities. See Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 662 (1st Dist. 1992).

³ The \$110 figure was derived by dividing 1997 total annual rental income by 24 (the number of tenants) and then by 12 (to convert annual rent to monthly rent).

any personal gain or profit from this enterprise. Rather, the primary beneficiaries of the applicant's activities are low-income seniors who are provided with low cost housing.

Simply stated, the applicant works in conjunction with the government to help low-income senior citizens. The applicant does so for altruistic motives rather than for personal gain. Under these circumstances, the applicant should be granted a sales tax exemption number.

WHEREFORE, for the reasons set forth above, I recommend that the Department's tentative denial of an exemption identification number be reversed.

Date: 6/1/99

Robert C. Rymek
Administrative Law Judge